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ELIGIBILITY OF ILLEGAL ALIENS FOR WORKERS' COMPENSATION BENEFITS

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Amidst the increased saliency of the illegal alien issue nationally, there are questions about the eligibility of illegal aliens for workers' compensation benefits. Although some jurisdictions resolve this issue in their statutory definition of "employee," in many others the question has been decided by the courts, and in some states the issue has not been finally determined. This is an update to our May, 2009 report.

In the following chart, "Y" is for "Yes," "LC" is for "Likely Covered," and "N" is for "No," regarding whether illegal aliens can receive workers' compensation benefits. Thirty-two states received a "Y" because their workers' compensation laws or court rulings specifically allow illegal aliens to obtain benefits. Seventeen states and the District of Columbia received an "LC," because there is no record to suggest, either in their workers' compensation statutes or case law, that they exclude aliens, legal or illegal, from coverage. The clear policy of including illegal aliens means that coverage should be presumed in these jurisdictions, unless and until a legislature or court decides otherwise.

Since the 2009 report, no state supreme court has ruled on the question of workers' compensation coverage for illegal aliens. An intermediate appellate court in Nebraska ruled illegal aliens are included in the state's definition of "employee." An intermediate appellate court in Florida ruled that the deliberate use of a fraudulent Social Security number during and after an illegal alien's injury, with the intent to receive benefits, was sufficient to bar compensability. Since our last report, no state has amended its statute to exclude illegal aliens. Wyoming remains the only state to exclude illegal aliens although, in subsequent amendments, permits compensability when the employer has a "reasonable belief" the worker has valid documentation authorizing employment (see below).

Wyoming is the only state marked as "N," as the only jurisdiction which expressly precludes illegal aliens from receiving workers' compensation benefits, as held by the Wyoming Supreme Court (*Felix v. Wyoming Workers' Safety & Comp. Division*, 986 P.2d 161 (Wyo. 1999), interpreting Wyo. Stat. Ann § 27-14-102). An amendment to the statute enacted in 2005 renders eligible for coverage aliens whom

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the employer reasonably believes (as defined) to have been authorized to work; the *Felix* decision, however, still stands.

Michigan is still included under "Y," as the state's supreme court has yet to rule definitively, and the Michigan lower courts have ruled illegal aliens are included in the definition of "employee" (*Sanchez v. Eagle Alloy*, 254 Mich. App. 651 (Mich.App. 2003)). Note, however, that Michigan Compiled Laws § 418.361(1) states that weekly wage-loss benefits are unavailable when injured employees are unable to work due to commission of a crime, and the Court of Appeals has ruled illegal immigration is such a crime (*Sanchez*, 254 Mich. App. at 667). Pending legislation, detailed in the following chart, would reverse this decision, permitting eligibility for weekly wage-loss benefits. Michigan's Supreme Court denied an appeal on the *Sanchez* verdict (471 Mich. 851 (Mich. 2004)), and has not ruled on this issue.

A 1999 decision by the Virginia Supreme Court also excluded illegal aliens from coverage (*Granados v. Windson Development Corp.*, 509 S.E.2d 290 (Va. 1999)), but that ruling was subsequently reversed by amendments to the state workers' compensation law (Va. Code Ann. § 65.2-101). Note that Virginia law does preclude illegal aliens' eligibility for vocational rehabilitation benefits (Va. Code Ann. § 65.2-603(A)(3)).

Many states justify inclusion by reasoning that "disallowing benefits would mean unscrupulous employers could hire undocumented workers without the burden of insuring them, a consequence that would encourage rather than discourage the hiring of illegal workers." *Curiel v. Environmental Management Services*, 655 S.E.2d 482, 484 (S.C. 2007). Many of these same states also have ruled that allowing illegal aliens to collect workers' compensation benefits does not conflict with and is not preempted by the federal Immigration Reform and Control Act of 1986 (ICRA). 8 U.S.C. §§ 1324a & c. ICRA prohibits employers from hiring illegal aliens, as well as the use of fraudulent documents to obtain employment.

In *Ruiz v. Belk Masonry Co.*, 148 N.C. App. 675, 678, 559 S.E.2d 249, 252 (N.C. Ct. App. 2002), the court cited a report from the U.S. House of Representatives which "expressly explained that it is not the intention of the Committee that the employer sanctions provisions of the bill be used to undermine or diminish in any way labor protections in existing law, . . ." The court therefore concluded that federal law does not "prevent illegal aliens, based solely on immigration status, from receiving workers' compensation benefits." *Id.* at 679, 252.

The South Carolina Supreme Court specifically endorsed *Ruiz* in *Curiel*, and noted that "IRCA does not expressly preclude an illegal alien from being considered an employee for workers' compensation benefits." *Curiel*, 655 S.E.2d at 484. The courts in *Curiel* and *Ruiz* also cite the following cases with the same conclusion: *Dowling v. Slotnik*, 244 Conn. 781, 712 A.2d 396 (Conn. 1998), cert. denied, 525 U.S. 1017, 142 L. Ed. 2d 451, 119 S. Ct. 542 (1998); *Safeharbor Employer Servs. I, Inc. v. Cinto Velazquez*, 860 So. 2d 984 (Fla. App. 2003); *Earth First Grading & Builders Ins. Group/Ass'n Servs, Inc. v. Gutierrez*, 270 Ga. App. 328, 606 S.E.2d 332 (Ga. App. 2004); *Design Kitchen and Baths v. Lagos*, 388 Md. 718, 882 A.2d 817 (Md. 2005); *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324 (Minn. 2003); *Mendoza v. Monmouth*

Recycling Corp., 288 N.J. Super. 240, 672 A.2d 221 (N.J. Super. 1996); *Reinforced Earth Co. v. W.C.A.B.*, 749 A.2d 1036 (Pa. Commw. 2000).

Several states that allow illegal aliens to receive workers' compensation benefits, nonetheless deny them any vocational benefits. These states include Nevada, New York, and, as noted, Virginia. The rationale is that illegal aliens do not have valid Social Security numbers, barring assistance from a vocational rehabilitation training agency helping them secure legal employment.

Even in states where illegal aliens are able to receive workers' compensation benefits, certain laws and interpretations may prevent benefits from being paid to injured or deceased workers' dependents not residing in the United States. In recent court decisions in Iowa (*Rojas v. Pine Ridge Farms*, 2009 Iowa App. LEXIS 77 (Iowa App. 2009)) and Alabama (*Duran v. Goff Group*, 2009 Ala. Civ. App. LEXIS 36 (Al. Civ. App. 2009)), arguments that a worker's dependents are entitled to such benefits have been rejected, with state courts finding that such benefits are not derivative of an employee's rights, and that dependent non-resident aliens have no standing to challenge the denial of workers' compensation benefits.

The state matrix follows.

Jurisdiction	Coverage?	Citation	Language
Alabama	LC	Ala. Code § 25-5-1(5) <i>Duran v. Goff Group</i> , 23 So.3d 45 (2009); cert. denied, May 8, 2009, Ala. Sup.Ct. 1080592	Statute defines "employee" or "worker" to include "aliens." <u>Held</u> : Rejected a constitutional challenge to a provision of Alabama's workers' compensation law requiring dependents to be actual residents of the United States at the time of the employee's death to receive benefits was rejected.
Alaska	LC	Alaska Stat. §§ 23.30.230 and 23.30.395 (12)	Section 23.30.395(20) defines "employee" as "an employee employed by an employer." Section 23.30.230 "Persons Not Covered" does not exclude illegal aliens.
Arizona	Y	Ariz. Rev. Stat. § 23-901(5)(b)	"Employee" is defined to include aliens, whether legally or illegally permitted to work for hire.
Arkansas	Y	Ark. Code Ann. § 11-9-102(9)(A)	Statute defines "employee" to include any person, "whether lawfully or unlawfully employed."

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California	Y	Cal. Lab. Code §§ 3351 and 1171.5 <i>Farmer Brothers Coffee v. Workers' Comp. Appeals Bd.</i> , 133 Cal. App. 4th 533 (Ca. Ct. App. 2005).	Section 3351 defines "employee" to include aliens, "whether lawfully or unlawfully employed." Section 1171.5 provides that "all protections, rights, and remedies available under state law...are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state." <u>Held:</u> The definition of "employee" includes illegal aliens, who are therefore entitled to receive workers' compensation benefits.
Colorado	Y	Colo. Rev. Stat. § 8-40-202(b) <i>Champion Auto Body v. Industrial Claim Appeal Office</i> , 950 P.2d. 671 (Co. Ct. App. Div. 1 1997).	Statute defines "employee" to include aliens, "whether lawfully or unlawfully employed." <u>Held:</u> Definition of "employee" entitled to coverage under the Act includes aliens, and does not distinguish between legal and illegal aliens.
Connecticut	Y	Conn. Gen. Stat. § 31-275(9)(A) <i>Dowling v. Slotnik</i> , 712 A.2d 396 (Conn. 1998)	"Employee" may include "any person," with no exclusion of illegal aliens. <u>Held:</u> The Connecticut Supreme Court ruled that illegal aliens are entitled to workers' compensation benefits under the statutory definition of "employee."
Delaware	LC	Del. Code Ann. tit. 19 § 2301(9)	Statute defines "employee" to include every person, and does not exclude illegal aliens.
District of Columbia	LC	D.C. Code § 32-1501(9)	Statute defines "employee" to include every person, and does not exclude illegal aliens.

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Florida	Y	<p>Fla. Stat. § 440.02(15)(a)</p> <p><i>Gene's Harvesting v. Rodriguez</i>, 421 So.2d 701 (Fla. Dist. Ct. App. 1982).</p> <p><i>AMS Staff Leasing, Inc. v. Arreola</i>, 976 So. 2d 612 (Fla. Ct. App. 2008)</p> <p><i>Arreola v. Administrative Concepts</i>, 17 So.3d 792 (Fla.App. 1 Dist., 2009)</p>	<p>Statute defines "employee" to include aliens, "whether lawfully or unlawfully employed."</p> <p><u>Held</u>: That workers' compensation claimant was alien illegally in country did not preclude entitlement to benefits for work-related injury.</p> <p><u>Held</u>: An injured employee who was an undocumented immigrant who returned to his home country is entitled to continued treatment outside the state of Florida and the United States, and the insurance carrier must pay for such treatment. The Court of Appeal, First District held: No provision of law required a person rendering health services to an injured worker to be licensed in the state of Florida, and no requirement the employee remain in Florida to receive treatment.</p> <p><u>Held</u>: An illegal immigrant's fraudulent use of a false Social Security number after the injury and during treatment, with intent to obtain benefits, bars compensability.</p>
Georgia	Y	<p>Ga. Code Ann. § 34-9-1(2)</p> <p><i>Continental Pet Technologies Inc. v. Palacias</i>, 604 S.E.2d 627 (Ga. Ct. App. 2004).</p>	<p>Statute defines "employee" to include every person, and does not exclude illegal aliens.</p> <p><u>Held</u>: Since the statute included "every person" under contract as an employee, illegal aliens are entitled to benefits.</p>
Hawaii	LC	Haw. Rev. Stat. § 386-1	Statute defines "employee" as "any individual in the employment of another person," and does not exclude illegal aliens.
Idaho	LC	Idaho Code Ann. § 72-102(12)	<p>Statute defines "employee" as "any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer," and does not exclude illegal aliens.</p> <p>Idaho Code Ann. § 72-1366(19) places restrictions on personal eligibility for aliens not lawfully admitted for permanent residence; however, this sub-section refers only to eligibility for unemployment benefits, not for workers' compensation benefits.</p>

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Illinois	Y	820 Ill. Comp.Stat. 305/1(b) <i>Economy Packing Co. v. Illinois Workers' Compensation Commission (Ramon Navarro, Appellee)</i> , 387 Ill. App. 3d 283; 901 N.E. 2d 915 (App. Ct. Ill., 1 st Dist. 2008)	Statute includes "aliens" in the definition of employee, without distinguishing between legal or illegal aliens. <u>Held</u> : An injured employee is entitled to temporary total disability (TTD) and permanent total disability (PTD) benefits despite that employee's status as an undocumented immigrant; such benefits are not pre-empted or forbidden by federal immigration law.
Indiana	LC	Ind. Code Ann. § 22-3-6-1(b)	Statute defines "employee" to include every person, and does not exclude illegal aliens.
Iowa	LC	Iowa Code § 85.61(11) <i>Rojas v. Pine Ridge Farms</i> , 779 N.W.2d 223 (2010)	Statute defines "worker" or "employee" as a person, and does not exclude illegal aliens. <u>Held</u> : If an injured or deceased worker's non-resident dependents in another country are entitled to benefits, a provision of Iowa law requiring the pay-back of half of those benefits into the state's second injury fund is permissible and does not violate the Equal Protection clause of the U.S. Constitution.
Kansas	LC	Kan. Stat. Ann. § 44-508(b) <i>Cordova v. Spice Merchant Co.</i> , (Ks. Work. Comp. Lexis 3118 1997, 1997 WL 803434).	Statute defines "workman" or "employee" as any person, and does not exclude illegal aliens. <u>Held</u> : Appeals board ruled that illegal aliens are entitled to receive workers' compensation benefits.
Kentucky	Y	Ky. Rev. Stat. Ann. § 342.640	Statute defines "employee" as every person, "whether lawfully or unlawfully employed," and does not exclude illegal aliens.

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Louisiana	Y	<p>La. Rev. Stat. Ann. § 23:1035(A)</p> <p>Louisiana Rehabilitation Services, Chapter 7, § 109(E)(1)(d) (2003)</p> <p><i>Artiga v. M.A. Patout & Son</i>, 671 So.2d 1138 (La. Ct. App. 1996).</p>	<p>Statute defines "employee" as every person, and does not exclude aliens. But the Louisiana Administrative Code denies vocational rehabilitation services to undocumented immigrants (see below).</p> <p>Louisiana Rehabilitation Services does not impose a residency requirement. Illegal aliens, however, cannot be served.</p> <p><u>Held</u>: Act does not exclude "illegal aliens" from securing workers' compensation benefits when justified.</p>
Maine	LC	<p>Me. Rev. Stat. Ann. tit. 39-A § 102(11)</p>	<p>Statutory definition of "employee" does not exclude illegal aliens.</p>
Maryland	Y	<p>Md. Code Ann., Labor & Employment Article, § 9-202</p> <p><i>Design Kitchen and Baths v. Lagos</i>, 882 A.2d 817 (Md. 2005).</p>	<p>Statute defines "employee" as an individual, and does not exclude illegal aliens.</p> <p><u>Held</u>: Claimant, an "undocumented alien," was a covered employee and therefore entitled to receive workers' compensation benefits.</p>
Massachusetts	Y	<p>Mass. Gen. Laws Ann. ch. 152, § 1(4)</p> <p><i>Bambila v. Chase-Walton Elastomers, Inc.</i> 11 Mass. Workers' Comp. Rep. 410 (1997).</p>	<p>Statute defines "employee" as every person, and does not exclude illegal aliens.</p> <p><u>Held</u>: Board ruled that the definition of "employee" includes illegal aliens, who are therefore entitled to receive workers' compensation benefits.</p>

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Michigan	Y	<p>Mich. Comp. Laws § 418.161(1)(f)</p> <p>Mich. Comp. Laws § 418.361(1)</p> <p><i>Sanchez v. Eagle Alloy</i>, 254 Mich. App. 651 (Mich. Ct. App. 2003).</p> <p>House Bill 5952, Michigan Legislature, 2010 Session</p>	<p>Statute defines "employee" as every person, including aliens.</p> <p>Employers are not liable for compensation for weekly wage-loss benefits if the employee is rendered unable to obtain or perform work because of commission of a crime. The Court of Appeals ruled that illegal immigration is such a crime (see below).</p> <p><u>Held</u>: "Undocumented employees" are employees as defined in the Workers' Compensation Act. But, the Court also held that a provision of Michigan's Workers' Compensation Act barring weekly wage-loss benefits upon commission of a crime applied to illegal immigrants. The Supreme Court granted leave to appeal, but the order was subsequently vacated.</p> <p>Would provide that "commission of a crime," as used in Mich. Comp. Laws § 418.361(1), does not include an alien's working without employment authorization or an alien's use of false documents to obtain employment or to seek work.</p>
Minnesota	Y	Minn. Stat. § 176.011, subd. 9	Statute defines "employee" as any person, including aliens.
Mississippi	Y	<p>Miss. Code Ann. § 71-3-3(d)</p> <p>Miss. Code Ann. § 71-3-27</p>	<p>Section § 71-3-3 defines "employee" as any person, "whether lawfully or unlawfully employed," and does not exclude illegal aliens.</p> <p>Section § 71-3-27 provides that "Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children or, if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported."</p>
Missouri	LC	Mo. Rev. Stat. § 287.020	Statute defines "employee" as every person, and does not exclude illegal aliens.

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Montana	Y	Mont. Code Ann. § 39-71-118(1)(a)	Statute defines "employee" as each person, including aliens, "whether lawfully or unlawfully employed."
Nebraska	Y	Neb. Rev. Stat. § 48-115(2) <i>Visoso v. Cargill Meat Solutions</i> , 18 Neb.App. 202, 778 N.W.2d 504 (Neb.App.,2009)	Statute defines "employee" and "worker" as every person, including aliens. <u>Held</u> : All aliens, including those not eligible to legally work, are covered by the Workers' Compensation Act. Although the text of the statute only says "alien," Court of Appeals of Nebraska says a plain language interpretation indicates that even illegal aliens are covered.
Nevada	Y	Nev. Rev. Stat. Ann. § 616A.105 <i>Tarango v. State Indus. Ins. Sys.</i> , 25 P.3d 175 (Nev. 2001).	Statute defines "employee" and "workman" as every person, including aliens, "whether lawfully or unlawfully employed." <u>Held</u> : Statutory definition of "employee" allows illegal aliens to receive workers' compensation benefits. But the court did rule that "formal vocational training must be denied if that training is required solely because of immigration status."
New Hampshire	LC	N.H. Rev. Stat. Ann. § 281-A:2	Statute defines "employee" as any person, and does not exclude illegal aliens.
New Jersey	Y	<i>Mendoza v. Monmouth Recycling Corp.</i> , 672 A.2d 221 (N.J. Super. Ct. 1996).	<u>Held</u> : "Illegal alien" with work-related injury was eligible for workers' compensation benefits.
New Mexico	Y	N.M. Stat. Ann. §§ 52-1-6 and 52-3-3	Section 52-1-6 (Application of provisions of act) does not exclude illegal aliens. Section 52-3-3 in the Occupational Disease Disablement Law includes aliens "legally or illegally permitted to work for hire."

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New York	Y	<p>N.Y. Workers' Compensation Law §§ 2(4), 17</p> <p><i>Testa v. Sorrento Rest., Inc.</i>, 197 N.Y.S.2d 560, 562 (N.Y. App. Div. 1960)</p> <p><i>Matter of Ramroop v. Flexo-Craft Print, Inc.</i>, 11 N.Y.3d 160; 896 N.E.2d 69 (N.Y. 2008)</p> <p><i>Coque v. Wildflower Estates Developers, Inc.</i>, 58 A.D.3d 44; 867 N.Y.S.2d 158 (N.Y. App. Div. 2008)</p>	<p>Section 2(4) defines "employee" as a person, and does not exclude illegal aliens.</p> <p>Section 17 (Aliens) provides that compensation for "nonresident aliens" shall be the same as provided for residents. Statute does not exclude illegal aliens.</p> <p><u>Held</u>: "Illegal aliens" are entitled to workers' compensation benefits. If the legislature meant to exclude "illegal aliens," it could have done so expressly.</p> <p><u>Held</u>: Injured employee, an undocumented immigrant, was not eligible for additional compensation in the form of rehabilitation benefits, because his status makes him ineligible to be rehabilitated through a Board-approved program.</p> <p><u>Held</u>: That an injured employee applied for work using a fraudulent Social Security number was not sufficient reason to deny lost wages when the employer knew or should have known of the worker's status or failed to verify the worker's eligibility as required by law.</p>
North Carolina	Y	<p>N.C. Gen. Stat. § 97-2(2)</p> <p><i>Rivera v. Trapp</i>, 519 S.E. 2d 777 (N.C. Ct. App. 1999).</p>	<p>Statute defines "employee" as every person, including aliens, "whether lawfully or unlawfully employed."</p> <p><u>Held</u>: Statute clearly indicates that the legislature intended to allow illegal aliens to receive workers' compensation benefits.</p>
North Dakota	LC	<p>N.D. Cent. Code § 65-01-02 (16)(a)(2)</p>	<p>Statute defines "employee" as a person, including aliens.</p>

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Ohio	Y	Ohio Rev. Code § 4123.01(A)(1)(b) <i>Rajeh v. Steel City Corp.</i> , 813 N.E.2d 697 (Ohio Ct. App. 2004). Senate Bill 238, 128 th Ohio General Assembly (2010)	Statute defines "employee" as every person, including aliens. <u>Held</u> : "Illegal aliens" are entitled to benefits. If the legislature meant to exclude "illegal aliens," it could have done so expressly. Illegal immigrants would be prohibited from receiving workers' compensation benefits, except in situations where the employer knew that the employee's presence was illegal or unauthorized, in which was workers' compensation benefits would still be available.
Oklahoma	Y	Okla. Stat. tit. 85, § 3(9)	Statute defines "employee" as any person, and does not specifically exclude illegal aliens.
Oregon	Y	Or. Rev. Stat. § 656.005 (30) Or. Rev. Stat. § 656.005 (10)	Statute defines "worker" as any person, "lawfully or unlawfully employed," and does not exclude illegal aliens. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term "dependent."
Pennsylvania	Y	77 Pa. Stat. § 22 <i>Reinforced Earth Company v. Workers' Comp. Appeals Board</i> , 810 A.2d 99 (Pa. 2002).	Statute defines "employee" as all natural persons, and does not exclude illegal aliens. <u>Held</u> : Public policy did not exclude claimant, an "unauthorized alien," from receiving relief under the Workers' Compensation Act.
Rhode Island	LC	R.I. Gen. Laws § 28-29-2(4)	Statute defines "employee" as any person, and does not exclude illegal aliens.
South Carolina	Y	S.C. Code Ann. § 42-1-130	Statute defines "employee" as every person, including aliens, "whether lawfully or unlawfully employed."
South Dakota	LC	S.D. Codified Laws § 62-1-3	Statute defines "employee" as every person, and does not exclude illegal aliens.

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Wisconsin	Y	Wis. Stat. Ann. § 102.07(4) <i>Rea v. Kenosha Beef Int'l, WI</i> Work. Comp. Workers' Compensation Review Commission, Claim No. 1990070904 (1999).	Statute defines "employee" as every person, and does not exclude illegal aliens. <u>Held</u> : The Workers' Compensation Act does not allow benefits to be withheld "due to illegal alien status."
Wyoming	N	Wyom. Stat. Ann. § 27-14-102(a) <i>Felix v. Wyoming Workers' Safety & Comp. Division</i> , 986 P.2d 161 (Wyo. 1999).	Statute defines "employee" as any person, including aliens authorized to work by the United States Department of Justice, Office of Citizenship and Immigration Services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States Department of Justice, Office of Citizenship and Immigration Services. <u>Held</u> : The legislature's express inclusion of "legally employed aliens" would be meaningless if the legislature had intended for all aliens to be included in the definition of employee. Language in § 27-14-102(a)(vii), added in the 2005 legislative session, renders eligible aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States Department of Justice, Office of Citizenship and Immigration Services.

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Also see: Robert I. Correales, "Workers' Compensation and Vocational Rehabilitation Benefits for Undocumented Workers: Reconciling the Purported Conflicts Between State Law, Federal Immigration Law, and Equal Protection to Prevent the Creation of a Disposable Workforce," 81 DENV. U.L. REV. 347, (2003), and Jason Schumann, "Working in the Shadows: Illegal Aliens' Entitlement to State Workers' Compensation," 89 IOWA L. REV. 709 (2004).

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